



Insight

Administration's January 2015 "Regulatory Review" Adds Nearly \$3 Billion in Costs

SAM BATKINS | MAY 12, 2015

The administration's recent attempt to [eliminate red tape](#) actually resulted in nearly \$3 billion in additional regulatory burdens for Americans. Under President Obama's executive orders ([13,563](#) and [13,610](#)), agencies were told to "modify, streamline expand, or repeal" existing regulations. Too often for the administration, regulations are regularly expanded and rarely repealed or modified.

Perhaps more troubling, these retrospective reviews of existing regulations seldom follow the law. Under Executive Order 13,610, agencies are required to submit retrospective plans to the White House "on the second Monday of January." Agencies then must make these reports public within "three weeks from the date of submission of the draft reports." This means that all reports were supposed to be public the first week of February. Instead, it wasn't until March 17, more than six weeks after the deadline, when regulatory czar [Howard Shelanski](#) outlined the new plans.

The American Action Forum (AAF) reviewed all publicly released plans from cabinet agencies and found:

- The updating agencies listed 438 rulemakings and amended paperwork requirements, with a median of 22 per agency;
- Among the listed rulemakings, net costs increased by more than \$2.9 billion, with just three agencies reducing burdens, and
- Among the listed rulemakings, there was a decrease of 60.1 million paperwork hours, led exclusively by the Department of Transportation (DOT).

Analysis of January 2015 Retrospective Review Plans

<u>Agency</u>	<u>Number of Rules Reviewed</u>	<u>Cost (in millions)</u>	<u>Burden Hours</u>
Agriculture	54	-\$0.2	267,033
Commerce	45	-\$0.1	-3,774
Defense	77	\$194	10,263
DHS	24	\$257	1,018,170

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Education	22	\$4,339	7,358,599
Energy	18		
EPA	21		
HHS	32	\$392	
HUD	11		
Interior	22	\$3	160,427
Justice	9		1,404
Labor	14	\$35	
State	28		-12,500
Transportation	47	-\$2,253	-68,916,917
Treasury	13		-18,385
Veterans Affairs	1		5,550
Totals	438	\$2,967	-60,130,180

Results

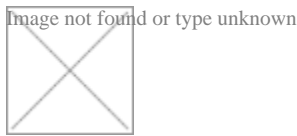
As noted, the headline figures are incredibly top heavy. Without the Department of Transportation (DOT), the totals would change to increased costs of \$5.2 billion and increased paperwork of 8.7 million hours. Once again, DOT saves the report from total failure, but that doesn't excuse other agencies from continuing to submit new rules that expand the regulatory state, add costs, and pile on more paperwork.

For example, the Department of Health and Human Services (HHS) included a rule in its retrospective plan that adds more than \$390 million in long-term burdens. The administration admits the rule [implements](#) part of the Affordable Care Act (ACA). In other words, the administration claims a new rule that imposes hundreds of millions of dollars in new burdens and implements the ACA is a retrospective review designed to streamline the regulatory process.

In addition, the Department of Education once again included its controversial "[Gainful Employment](#)" rule in its plan, even though it will cost \$4.3 billion and add more than 6.9 million paperwork burden hours. The regulation, [previously struck down](#) by an Obama appointee, would not streamline the current regulatory environment; it would single out for-profit education for onerous new rules. In the rule's brief acknowledgement of the president's executive order, it notes, "[T]he Department believes that these final

regulations are consistent with the principles in Executive Order 13563.” However, despite billions of dollars in total costs, the administration fails to provide a single benefit figure and can’t explain how nearly seven million hours of new paperwork will streamline the regulatory system.

As a result of the gainful employment rule, the Department of Education’s cumulative paperwork burden is now 94.8 million hours. By contrast, [in 2008](#) that figure stood at 58.5 million hours. Despite the president’s effort to cut red tape, the amount of [education-related](#) paperwork has increased by 62 percent.



Thankfully, the Department of Transportation (DOT) saved all other agencies by finalizing or proposing \$2.5 billion in cost-cutting measures and reducing 68.9 million paperwork burden hours. For perspective, DOT’s current paperwork burden is 317 million hours.

DOT achieved these goals through its “Driver-Vehicle Inspection Report” (DVIR), an example of an agency revisiting its regulatory slate and making substantive revisions, rather than simply adding another layer of rules and pretending that the measure was “retrospective.” The DVIR rule is projected to save the trucking industry \$1.7 billion in costs and eliminate more than [46 million hours](#) of paperwork. The agency also proposed to eliminate [22 million](#) hours of paperwork by revising its “Hours of Service” reporting.

A Culture of Retrospective Review?

Current Harvard law professor and former regulatory czar, Cass Sunstein, wanted to instill a “[consistent culture of retrospective review](#)” when he helped to advance the president’s executive orders. Looking at the number of new initiatives in the retrospective reviews reveals that many agencies simply “cut and paste” from their previous work.

For example, the Departments of Energy (DOE), Housing and Urban Development (HUD), and the Environmental Protection Agency (EPA) failed to quantify a single new rulemaking that cuts costs in their recent reports. Even though there were 438 entries provided in the January update, only 140 of them were new. The chart below outlines the number of new reviews by agency and the percentage of previous rulemakings that agencies borrowed from past reports.

Updates from Previous Reports		
Agency	Number of New Reviews	Percentage of Old Rules
Agriculture	31	42.6%
Commerce	13	71.1%
Defense	30	61%
DHS	1	95.8%

Updates from Previous Reports		
Education	14	36.4%
Energy	0	100%
EPA	2	90.5%
HHS	10	68.8%
HUD	8	27.3%
Interior	8	63.6%
Justice	5	44.4%
Labor	3	78.6%
State	5	82.1%
Transportation	6	87.2%
Treasury	3	76.9%
Veterans Affairs	1	0%
Totals	140	Average: 64.3%